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August 3, 2021

Iowa Pub. Emps.' Ret. Sys. et al. v. Bank of Am. Corp. et al., No. 17-cv-6221 (KPF)

Dear Judge Failla:

Section 9 of the Protective Order (Dkt. Nos. 150, 228) provides that for any filing that quotes or refers to discovery material that has been designated Confidential, Highly Confidential, or Highly Confidential Data, the party “shall request to file such documents or portions thereof containing or making reference to such material or information in redacted form or under seal.” Consistent with the process this Court approved for such requests (Dkt. No. 408), the Parties now move for sealing or redaction of certain materials filed with Defendants’ Opposition to Plaintiffs’ Class Certification Motion. The Parties’ justifications for sealing or redacting those materials under *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006), and its progeny are as follows.

Defendants’ Justifications and Designations

Defendants’ memorandum and certain supporting materials quote from, discuss, and make reference to the substance of documents and data designated “Confidential” and “Highly Confidential” under the Parties’ January 2, 2019 Protective Order (Dkt. No. 150), and “Highly Confidential Data” under the Parties’ October 30, 2019 Supplemental Protective Order (Dkt. No. 228). Such materials include trade secrets, other confidential research, development, or commercial information, and other private or competitively sensitive information, including personal data. Accordingly, Defendants request that the marked portions of Defendants’ memorandum of law, of Exhibits 1, 2, 3, 4, 67, and 68 to the Declaration of Michael A. Paskin dated June 29, 2021 (the “Paskin Declaration”), and the Paskin Declaration itself, be filed in redacted form. We also ask that Exhibits 5, 10, 16, 29-30, 32-35, 38-39, 43-46, 55-58, 60, and 62-65 to the Paskin Declaration be filed entirely under seal. This is in accordance with Section 9 of the Protective Order, which provides that for “papers containing or making reference to the substance of [“Confidential”, “Highly Confidential”, or “Highly Confidential Data”] material or

information, [a Party] shall request to file such documents or portions thereof containing or making reference to such material or information in redacted form or under seal.”

Defendants’ memorandum and certain supporting materials also quote from, discuss, and refer to the substance of discovery material produced by Third Parties subject to confidentiality designations, which likewise include trade secrets, other confidential research, development, or commercial information, or other private or competitively sensitive information, including personal data. Defendants have proposed, and Plaintiffs have had the opportunity to review, filing such materials under seal or with redactions consistent with the designations made by Third Parties and *Lugosch*. Accordingly, Defendants request on their behalf that marked portions of Defendants’ memorandum and Exhibits 1, 2, 3, and 4 to the Paskin Declaration, and the Paskin Declaration itself, be filed in redacted form. We also request that Exhibits 6-8, 11-15, 17-28, 31, 36-37, 40-41, 47-54, and 61 to the Paskin Declaration be filed entirely under seal.

Plaintiffs’ Justifications and Designations

Defendants’ opposition papers quote from, discuss, and refer to discovery material produced by certain Parties subject to confidentiality designations, which include trade secrets, highly confidential data, other confidential research, development, or commercial information, or other private or competitively sensitive information, including personal data. In addition, Defendants’ papers discuss in detail material approved for redaction or sealing pursuant to ECF 422. Accordingly, Plaintiffs request that the marked portions of Defendants’ memorandum of law, of Exhibits 1, 2, 3, and 4 to the Declaration of Michael A. Paskin dated June 29, 2021, and Mr. Paskin’s Declaration itself, be filed in redacted form. We also ask that Exhibits 9, 42, 59, and 66 to Mr. Paskin’s Declaration be filed under seal. Plaintiffs take no position with respect to Defendants’ redaction and under-seal requests beyond those which we request ourselves, and reserve all rights under the Protective Orders.

Sincerely,

/s/ Michael A. Paskin

Michael A. Paskin

*Attorney for Defendants Morgan Stanley &
Co. LLC, Prime Dealer Services Corp., and
Strategic Investments I, Inc.*

Honorable Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

VIA ECF AND EMAIL

Application GRANTED. The portions of Defendants' submissions specified above may be filed under seal, viewable only to the parties and the Court.

The Clerk of Court is directed to terminate the motion pending at docket entry 440.

Date: August 4, 2021
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE